

Steven Sieff
Legal Aid Society of San Mateo County
298 Fuller Street
Redwood City, CA 94063

NEIL CRAWFORD, County Clerk
By Michelle Bence
DEPUTY CLERK

IT IS FURTHER ORDERED that defendant Rushen and her successor in interest to the position of the Director of the California Department of Corrections and defendant Ylst, [sic] the

Superintendent of the California Medical Facility, and their officers, agents, employees, representatives, successors in interest, and all person acting in concert or participating with them, shall be and are hereby perpetually enjoined and restrained henceforth from engaging in, committing or performing directly or indirectly by any means whatsoever any and all of the following:

1. Administering to individuals confined within the jurisdiction of the California Department of Corrections involuntary medication in excess of 3 days unless such individuals are provided with the protections specified in §§II A to II G, inclusive, of this permanent injunction;

2. Administering to individuals confined within the jurisdiction of the California Department of Corrections involuntary medication in excess of 10 days unless such individuals are provided with the protections specified in §§II H to II P inclusive of this permanent injunction;

3. Administering to individuals confined within the jurisdiction of the California Department of Corrections involuntary medication in excess of 24 days unless such individuals are provided with the protections specified in §§II A to III I inclusive of this permanent injunction.

I

DEFINITIONS

The following definitions apply to the terms used in this permanent injunction.

1. "Informed Consent": Informed consent means that the prisoner, without duress or coercion, clearly and explicitly manifests consent to the proposed medication to the treating physician in writing. In order to obtain informed consent, the following information shall be given to the prisoner in a clear and explicit manner:

- a. The reason for treatment, that is, the nature and seriousness of the person's illness, disorder or defect.
- b. The nature of the procedures to be used in the proposed treatment, including its probably frequency and duration.
- c. The probably degree and duration (temporary or permanent) of improvement or remission, expected with or without such treatment.
- d. The nature, degree, duration, and the probability of the side effects and significant risks, commonly known by the medical profession, of such treatment, including its adjuvants, especially noting the degree and duration of memory loss (including its irreversibility) and how and to what extent they may be controlled, if at all.
- e. That there exists a division of opinion as to the efficacy of the proposed treatment (if such a division of opinion exists), why and how it works and its commonly known risks and side effects.
- f. The reasonable alternative treatments, and why the physician is recommending this particular treatment.
- g. That the individual has the right to accept or refuse the proposed treatment, and that if he consents, he has the right to revoke his consent for any reason, at any time prior to or between treatments.

2. "Incompetent to Refuse Medication": A prisoner is "incompetent to refuse medication" or "lacks the capacity to refuse medication" if the prisoner cannot understand or knowingly and intelligently act upon the information specified under "informed consent" above. A prisoner shall not be deemed incompetent to refuse medication or lacking the capacity to refuse medication solely by virtue of being diagnosed a mentally ill, disordered, abnormal or mentally defective person.

3. "Gravely Disabled": Gravely disabled is defined in substantial accord with Welfare and Institutions Code §5008 subdivision (1). A prisoner is "gravely disabled" if the prisoner, as a result of a mental disorder, is unable to use the elements of life which are essential to health and safety including food, clothing, and shelter, even though provided to the prisoner by others.

4. "Danger to Other": Danger to others is defined in substantial accord with Welfare and Institutions Code §5300. A prisoner is a "danger to others" only if one of the following exist:

a. The prisoner has attempted, inflicted, or made a serious threat of substantial physical harm upon the person of another after having been taken into custody, and while in custody, for evaluation and treatment, and who, as a result of mental disorder, presents a demonstrated danger of inflicting substantial physical harm upon others.

b. The prisoner has attempted, or inflicted physical harm upon the person of another, that act having resulted in his or her being taken into custody and who presents, as a result of mental disorder, a demonstrated danger of inflicting substantial physical harm upon others.

c. The prisoner had made a serious threat of substantial physical harm upon the person of another within seven days of being taken into custody, that threat having at least in part resulted in his or her being taken into custody, and the person presents, as a result of mental disorder, demonstrated danger of inflicting substantial physical harm upon others.

5. "Custody": The term "custody" shall be construed to mean confinement in an inpatient psychiatric unit uninterrupted by any period of release or transfer from such a unit. An inpatient psychiatric unit is a service, department or division of a facility which is organized, staffed and equipped to provide inpatient care for mentally disordered individuals.

6. "Danger to Self": A prisoner is a "danger to self", if, as a result of mental disorder, the prisoner, while in custody, has threatened or attempted to take his own life or has threatened, attempted, or inflicted serious physical injury on himself and who continues to represent an imminent threat of taking his own life or an imminent threat of inflicting serious physical injury on himself.

7. "Involuntary Medication": "Involuntary medication" refers to the administration of any psychotropic, psychoactive, or antipsychotic medication or drug to any person by the use of force, discipline, or restraint. It includes the administration of any such medication or drug to a person who does not give informed consent as defined herein.

8. "Psychotropic or Antipsychotic Drugs": The terms "psychotropic drugs" and or "antipsychotic drugs" refer to drugs or medications used in the treatment of mental disease, mental disorder, or mental defect. The terms include, but are not limited to, thorazine, prolixin, stelazine, serentil, guide, lithium, loxitane, tindal, compazine, trilafon, repoise, mellaril, tracton, navane, haldol, moban and vesprin.

II

CERTIFICATION FOR INVOLUNTARY MEDICATION OF UP TO 21 DAYS DURATION

A. CONDITIONS FOR CERTIFICATION

1. If a prisoner has been administered involuntary medication for 72 hours or less, he or she may be certified for not more than 21 additional days of involuntary medication related to a mental disorder under the following conditions:

a. The professional staff of the facility where the prisoner is incarcerated has analyzed the prisoner's condition and has found either that the prisoner is, as a result of mental disorder, gravely disabled and incompetent to refuse medication or a danger to others, or a danger to self.

b. The prisoner has been advised of the need for, but has not been willing to accept medication on a voluntary basis.

B. NOTICE OF CERTIFICATION

1. For a prisoner to be certified for involuntary medication of 21 days or less, a notice of certification shall be signed by two people. The first person shall be the chief psychiatrist or person in charge of psychiatric treatment at the facility in which the prisoner is confined. A designee of the professional person in charge of psychiatric treatment at the facility shall be a psychiatrist or a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders.

2. The second person shall be a physician or psychologist who participated in the evaluation. The physician shall be, if possible, a board certified psychiatrist. The psychologist

shall be licensed and have at least five years of post graduate experience in the diagnosis and treatment of emotional and mental disorders.

3. If the professional person in charge, or his designee, is the physician who performed the medical evaluation or a psychologist, the second person to sign may be another physician or psychologist unless one is not available, in which case a social worker or a registered nurse who participated in the evaluation shall sign the notice of certification.

C. FORM OF NOTICE OF CERTIFICATION

1. A notice of certification is required for all persons certified for 21 days of involuntary medication, and shall be in substantially the following form:

The medical staff on the (name of the facility) has evaluated the condition of:

Name _____

Location _____

Age _____

Sex _____

Marital Status (if known) _____

We the undersigned allege that the above-named prisoner is, as a result of mental disorder:

(1) A danger to others.

(2) A danger to self.

(3) Gravely disabled in that the prisoner is unable to use the elements of life which are essential to health and safety including food, clothing, and shelter, even though provided to the prisoner by others.

The specific facts which form the basis for our opinion that the above-named prisoner meets one or more of the classifications as is indicated above.

[Strike out all inapplicable classifications]

The above-named prisoner has been informed of this evaluation, and has been advised of the need for, but has not been able or willing to accept medication on a voluntary basis.

We, therefore, certify the above-named prisoner to receive involuntary medication related to the mental disorder for no more than 21 days beginning the _____ day of [month], 19 ____, in the facility herein named _____.

[Date]

Signed : _____

Signed : _____

Countersigned _____
(Representing Facility)

I hereby state that I delivered a copy of this notice this day to the above-named prisoner and that I informed him that unless judicial review is requested a certification review hearing will be held within ten days of the initial involuntary medication and that an attorney or advocate will visit him to provide assistance in preparing for the hearing or to answer questions regarding his or her involuntary medication or to provide other assistance.

Signed: _____

D. COPIES OF CERTIFICATION NOTICE; DESIGNATION OF PERSON TO BE INFORMED

A copy of the certification notice shall be personally delivered to the prisoner certified for involuntary medication of 21 days or less, the prisoner's attorney, or the attorney or advocate designated. The prisoner certified shall also be asked to designate any person who is to be sent a copy of the certification notice. If the prisoner certified is incapable of making this designation at the time of certification, he shall be asked to designate a person as soon as he is capable. Delivery of the notice shall take place within 5 days after the initial involuntary medication.

E. INFORMED PERSON CERTIFIED OR RIGHT TO CERTIFICATION REVIEW HEARING; RIGHT TO ASSISTANCE AT HEARING

The person delivering the copy of the notice of certification to the prisoner certified shall, at the time of delivery, inform the prisoner certified that he is entitled to a certification review hearing, to be held within ten days of the initial involuntary medication of the prisoner, in accordance with paragraph II of this order unless judicial review is requested, to determine whether or not probable cause exists to subject the prisoner to involuntary medication related to the mental disorder. The prisoner certified shall be informed of his rights with respect to the certification review hearing, including the right to the assistance of another person to prepare for the hearing or to answer other questions and concerns regarding his involuntary medication or both.

F. INFORMING PERSON CERTIFIED OF RIGHT TO HABEA CORPUS AND RIGHT TO COUNSEL

The person delivering the copy of the notice of certification to the prisoner certified shall, at the time of delivery, inform the prisoner certified of his legal right to a judicial review by

habeas corpus and shall explain that term to the prisoner certified, and inform the person of his right to counsel, including court appointed counsel.

G. CERTIFIED PERSON'S MEETING WITH ATTORNEY OR PATIENT ADVOCATE

1. As soon after the certification as practicable, an attorney or patient advocate shall meet with the prisoner certified to discuss the involuntary treatment process and to assist the prisoner in preparing for the certification review hearing or to answer questions or otherwise assist the prisoner as to appropriate.

2. The attorney or patient advocate must be provided with timely access to all health care records which adult patients are entitled to pursuant to Health and Safety Code §§25251 et seq. and Welfare and Institutions Code §5328 subdivisions (b) and (j), the prisoner's central, medical, and psychiatric files, and all documents and files on which defendants rely in certifying the prisoner for involuntary medication or requesting an order authorizing involuntary medication. These records shall be released to the attorney or patient advocate upon presentation of a release of information signed by the prisoner, except that when the prisoner is unable or unwilling to sign such release, the staff of the facility, upon satisfying itself of the identity of the attorney or advocate, and of the fact that the attorney or advocate does represent the interests of the prisoner, shall release all such information and records relating to the prisoner.

H. TIME LIMIT FOR HOLDING CERTIFICATION REVIEW HEARING

When a prisoner is certified for involuntary medication, a certification review hearing shall be held unless judicial review has been requested by the prisoner seeking a petition for writ of habeas corpus. The certification review hearing shall be held within ten days of the initial involuntary medication of the prisoner unless postponed by the prisoner or his attorney or advocate. Hearings may be postponed for 48 hours by the prisoner or his attorney or advocate.

I. PROCEDURE REGARDING CERTIFICATION REVIEW HEARING

The certification review hearing shall be conducted by either a court-appointed commissioner or a referee, or a certification review hearing officer. The certification review hearing officer shall be either a state qualified administrative law hearing officer, a medical doctor, a licensed psychologist, a registered nurse, a lawyer, a certified law student, or a licensed clinical social worker. Licensed psychologists, licensed clinical social workers, and registered nurses who serve as certification review hearing officers shall have had a minimum of five years experience in mental health. Certification review hearing officers shall be selected from a list of eligible persons unanimously approved by a panel composed of the local mental health director, the public defender, and the district attorney of the county in which the facility is located. No employee of the California Department of Corrections may serve as a certification review hearing officer.

2. The provisions of section II I 1 of this permanent injunction are stayed until January 1, 1987. Between the date this permanent injunction is filed and January 1, 1987, the certification review hearing shall be conducted by a psychiatrist selected by the California Department of Corrections. The psychiatrist selected by the California Department of Corrections may not be an employee of the California Department of Corrections.

3. The location of the certification review hearing shall be compatible with, and least disruptive of, the treatment being provided to the prisoner certified. In addition, hearings conducted by certification review officers shall be conducted at an appropriate place at the facility where the prisoner certified is receiving treatment.

J. PRESENTATION OF EVIDENCE

At the certification review hearing, the evidence in support of the certification decision shall be presented by a person designated by the superintendent or warden of the facility.

K. CERTIFIED PRISONER'S RIGHT TO BE PRESENT

The prisoner certified shall be present at the certification review hearing unless he or she, with the assistance of his attorney or advocate, waives his or her right to be present at a hearing.

L. CERTIFIED PRISONER'S PROCEDURAL RIGHTS

1. At the certification review hearing, the prisoner certified shall have the following rights:

- a. Assistance by an attorney or advocate.
- b. To present evidence on his or her own behalf.
- c. To question persons presenting evidence in support of the certification decision.
- d. To make reasonable requests for the attendance of facility employees who have knowledge of, or participated in, the certification decision.
- e. If the prisoner has received medication within 24 hours or such longer period of time as the person conducting the hearing may designate prior to the beginning of the hearing, the person conducting the hearing shall be informed of that fact and of the probable effects of the medication.

2. The hearing shall be conducted in an impartial and informal manner in order to encourage free and open discussion by participants. The person conducting the hearing shall not be bound by rules of procedure or evidence applicable in judicial proceedings.

3. All evidence which is relevant to establishing that the prisoner certified is or is not as a result of mental disorder either gravely disabled and incompetent to refuse medication or a

danger to others or a danger to self may be admitted at the hearing and considered by the hearing officer.

M. CONCLUSION OF HEARING; BASIS FOR TERMINATION OF INVOLUNTARY MEDICATION:

1. If at the conclusion of the certification review hearing the person conducting the hearing finds that there is not probable cause to believe that the prisoner certified is, as a result of mental disorder, either gravely disabled and incompetent to refuse medication or a danger to others or a danger to self, then the prisoner certified may no longer be involuntarily medicated.

2. In determining whether there is probable cause to believe that the prisoner is incompetent to refuse medication, the person conducting the certification review hearing must determine whether there is probable cause to believe that the prisoner is incapable of understanding or intelligently acting on the informational factors listed in the definition of "informed consent", which is set forth in §I.

3. If at the conclusion of the certification review hearing the person conducting the hearing finds that there is probable cause that the prisoner certified is, as a result of a mental disorder, either gravely disabled and incompetent to refuse medication, or a danger to others or a danger to self, then the prisoner may be involuntarily medicated for 21 additional days beyond the end of the 72-hour period following the initial involuntary medication.

N. NOTICE OF DECISION TO CERTIFIED PRISONER; NOTICE OF RIGHT TO FILE REQUEST FOR TERMINATION OF MEDICATION

The prisoner certified shall be given oral notification of the decision at the conclusion of the certification review hearing. As soon thereafter as is practicable, the attorney or advocate for the prisoner certified and the director of the facility where the prisoner is receiving medication shall be provided with a written notification of the decision, which shall include a statement of

the evidence relied upon and the reasons for the decision. The attorney or advocate shall notify the prisoner certified of the certification review hearing decision and of his rights to file a request for termination of involuntary medication and to have a hearing on the request before the superior court. A copy of the decision of the hearing officer and the certification notice shall be submitted to the superior court of the county in which the facility is located.

O. TERMINATION OF CERTIFICATION

Prisoners who have been certified for 21 days of involuntary medication shall not be involuntarily medicated beyond 24 days after the initial involuntary medication unless a court order has been obtained pursuant to paragraph III.

P. MAXIMUM PERIOD OF INVOLUNTARY MEDICATION

After the involuntary medication has begun, the total period of involuntary medication, including intervening periods of voluntary treatment, shall not exceed the total maximum period during which the prisoner could have been involuntarily medicated, if the prisoner has been medicated continuously on an involuntary basis, from the time of initial involuntary medication.

III

JUDICIAL AUTHORIZATION FOR INVOLUNTARY MEDICATION

Prior to involuntary medicating a prisoner for more than 24 days, except as specified in paragraph IIIH below, defendants are ordered: (1) to obtain an order authorizing involuntary medication from the Superior Court in accord with the provisions set forth in paragraph III A to III G and, (2) to insure that the prisoner is provided with the procedural protections set forth in paragraphs III A to III G.

A. CONTENTS OF PETITION FOR ORDER AUTHORIZING INVOLUNTARY MEDICATION;RESPONSE

1. In order to obtain an order authorizing involuntary medication for more than 24 days, defendants must file a petition seeking such an order in the Superior Court of the County in which the prisoner is confined.

2. The petition must be verified and must allege and set forth by medical affidavit or declaration attached thereto, all of the following so far as is known to defendants at the time the petition is filed.

a. the nature of the psychiatric condition of the prisoner which requires treatment;

b. the recommended course of psychiatric treatment which is considered to be medically appropriate;

c. the threat to the health of the prisoner if authorization for the recommended course of treatment is delayed or denied by the court;

d. the predictable or probable outcome of the recommended course of treatment;

e. the available alternatives, if any, to the course of treatment recommended;

f. the efforts made to obtain an informed consent from the prisoner;

g. a reference to any incidents that precipitated the filing of the petition either by a summary of the incidents or the attachment of the incident report (if any);

h. that the prisoner, as a result of mental disorder, presents a danger to others, presents a danger to self, or is gravely disabled and is incompetent to refuse medication;

i. The names and addresses of the prisoner's next of kin (if known) or persons listed in the prisoner's records to receive notification in case of emergency.

3. The prisoner or his attorney may file a response to the petitioner within five days of the service of the petition on the prisoner or his attorney.

B. PETITION FOR ORDER AUTHORIZING INVOLUNTARY MEDICATION; SERVICE AND FILING

Defendants must file the petition and personally serve a copy of the petition on the prisoner and his attorney at least 15 days prior to the hearing on the petition. In place of personal service on the prisoner's attorney, the attorney for the prisoner may be served by mail at least 20 days prior to the hearing. At least 15 days prior to the hearing, defendants must serve a copy of the petition on the prisoner's next of kin (if known) or on the persons listed in the prisoner's records maintained by defendants to receive notification in case of emergency. Service on such individuals may be made by mail.

C. ASSISTANCE OF COUNSEL

The public defender or another attorney shall be appointed or an attorney shall be otherwise obtained to represent the prisoner within five days after the filing of the petition. The attorney shall be provided timely access to the documents specified in §IIG2 pursuant to the procedures specified in §IIG2.

D. PERSONAL APPEARANCE AT JUDICIAL HEARING

1. The prisoner must be produced at the judicial hearing except in the following cases:
 - a. Where the prisoner is unable to attend the hearing by reason of medical inability and, prior to the date of the hearing, defendants obtain a court order authorizing the non-attendance of the prisoner on such grounds.

b. Where a court investigator reports to the court that the prisoner has expressly communicated that the prisoner (1) is not willing to attend the hearing and (2) does not wish to contest the petition, and the court makes an order that the prisoner need not attend the hearing.

2. If the petition alleges or defendants contend that the prisoner is unable to attend the judicial hearing because of medical inability, such inability shall be established by the affidavit or certificate of a licensed medical practitioner. The affidavit or certificate is evidence only of the prisoner's inability to attend the hearing and shall not be considered in determining the issue of need for an order authorizing involuntary medication. Emotional or psychological instability is not good cause for the absence of the prisoner from the hearing unless, by reason of such instability, attendance at the hearing is likely to cause serious and immediate physiological damage to the prisoner.

3. If the petition alleges or defendants contend that the prisoner is not willing to attend the hearing, or upon the filing of an affidavit or certificate attesting to the medical inability of the prisoner to attend the hearing, defendants shall request that a court investigator be appointed to do all of the following or the prisoner's attorney be directed to do all of the following:

a. Interview the prisoner personally.

b. Inform the prisoner of the contents of the petition, of the nature, purpose, and effect of the proceeding, and of the right of the prisoner to oppose the proceeding, to attend the hearing, to be represented by legal counsel if he so chooses, and to have legal counsel appointed by the court if unable to retain legal counsel.

c. Determine whether it appears that the prisoner is unable to attend the hearing and, if able to attend, whether the prisoner is willing to attend the hearing.

d. Determine whether the prisoner wishes to contest the petition.

e. Determine whether the prisoner wishes to be represented by legal counsel

and, if so, whether the prisoner has retained legal counsel and, if not, the name of the attorney the prisoner wishes to retain.

E. RIGHT TO EXPEDITED JUDICIAL DETERMINATION

1. The prisoner or his attorney shall have the right to file a written demand for any expedited court hearing on the petition.

2. If a demand for an expedited court hearing is file, the court hearing shall commence within ten days of the date of the filing of the demand.

F. JUDICIAL DETERMINATION

Defendants must obtain a court order authorizing the recommended course of involuntary medication and finding that one or more of the following exist:

a. that the court has found by clear and convincing evidence that the prisoner, as a result of a mental disorder, is gravely disabled and incompetent to refuse medication;

b. That the court has found, by clear and convincing evidence, that the prisoner, as a result of a mental disorder, is a danger to others or a danger to self.

G. REHEARING RIGHTS

The prisoner is afforded the right to petition the court for a rehearing to contest whether he presently is a danger to others, a danger to self, gravely disabled, or incompetent to refuse medication. After the filing of the first petition for rehearing, no further petition for rehearing shall be submitted for a period of six months.

H. TEMPORARY ORDER

Defendants may involuntarily medicate a prisoner for a period of no more than 23 days beyond the end of the certification period or such lesser period as may be specified in the court order if all of the following are present:

- a. defendants make a request for such a temporary order and submit an affidavit or declaration to the court clearly establishing the necessity for the temporary order;
- b. defendants provide three days notice to the prisoner and to his attorney (if an attorney has been appointed or retained) of the request for a temporary order and personally serve the petition and all documents in support of the request for a temporary order on the prisoner and his attorney at least three days prior to the court's ruling on defendants' request; and
- c. Defendants obtain such an order from the court.

I. LIMITATIONS ON LENGTH OF INVOLUNTARY TREATMENT

1. Defendants are further enjoined from administering involuntary medication to prisoners for whom a court order has been obtained as described in §III F (authorizing involuntary medication on the ground the prisoner is gravely disabled and is incompetent to refuse medication) for a period in excess of one year from the date of the order or such shorter period as may be specified in the order unless defendants file a new petition with the court and the prisoner is provided with the procedural protections specified in paragraphs III A to III H.

2. Defendants are further enjoined from administering involuntary medication to prisoners for whom a court order has been obtained as described in §III F (authorizing involuntary medication on ground the prisoner is a danger to others or is a danger to self) for a period in excess of 180 days from the date of the order or such shorter period of time as

may be specified in the order unless defendants file a new petition with protections specified in paragraphs III A to III H.

J. EMERGENCY ADMINISTRATION OF MEDICATION

1. Nothing in these procedures is intended to prohibit a physician from taking appropriate action in an emergency. An emergency exists when there is a sudden marked change in the prisoner's condition so that action is immediately necessary for the preservation of life of the prevention of serious bodily harm to the patient or others, and it is impracticable to first obtain consent. If antipsychotic medication is administered during an emergency, such medication shall be only that which is required to treat the emergency condition and shall be provided in ways that are least restrictive of the personal liberty of the patient.

2. Section III J 1 shall not be construed to very or diminish in any way the procedural and substantive protections which must be provided to prisoners under §§I, II, and III of this permanent injunction. If a prisoner is administered involuntary medication in excess of 3 days he must be provided with the protections specified in §§II A to II G. If a prisoner is administered involuntary medication in excess of 10 days he must be provided with the protections specified in §§II H to II P. If a prisoner is administered involuntary medication in excess of 24 days he must be provided with protections specified in §§II A to III I. Any period of emergency medication is to be included in the time periods specified in this permanent injunction.

3. In the event a prisoner who has been found by a court not to meet the criteria for involuntary medication within the preceding 30 days is administered antipsychotic medication in an emergency, and such emergency condition is likely to last beyond 24 hours, the treating physician shall file a new petition within 48 hours. The prisoner or his attorney may file a

Request for an expedited hearing on the petition. If such a request is filed, the hearing shall be held within 5 days of the filing of the request.

Dated: OCT 31, 1986

WILLIAM E. JENSEN
William E. Jensen
Judge of the Superior Court